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JUN 23 2008

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
gmc

No. 26771-7-III

COURT OF APPEALS, DIVISION III
STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

DANIEL ALFRED POSEY, JR.,

Appellant.

On Appeal from the Yakima County Superior Court
Cause No. 03-1-00820-1
The Honorable Susan Hahn, Judge

OPENING BRIEF OF APPELLANT

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COPY

TABLE OF CONTENTS

| | | |
|------|---|----|
| I. | ASSIGNMENTS OF ERROR | 1 |
| | A. Assignments of Error | 1 |
| | B. Issues Pertaining to the Assignments of Error..... | 1 |
| II. | STATEMENT OF THE CASE | 1 |
| III. | ARGUMENT & AUTHORITIES..... | 5 |
| IV. | CONCLUSION..... | 11 |

TABLE OF AUTHORITIES

CASES

| | |
|---|---|
| <u>In re Dillenburg v. Maxwell</u> , 70 Wn.2d 331, 422 P.2d 783 (1967) | 7 |
| <u>State v. Bushnell</u> , 38 Wn. App. 809, 690 P.2d 601 (1984) | 7 |
| <u>State v. Nicholson</u> , 84 Wn. App. 75, 925 P.2d 637 (1996) | 7 |
| <u>State v. Posey</u> , 161 Wn.2d 638, 167 P.3d 560 (2007) | 6 |
| <u>State v. Rosenbaum</u> , 56 Wn. App. 407, 784 P.2d 166 (1989) | 9 |

STATUTES & OTHER AUTHORITIES

| | |
|-------------------------------------|------|
| RCW 9.94A.030 | 6 |
| RCW 13.04.030(1) | 5 |
| RCW 13.04.030(1)(e) | 8 |
| RCW 13.04.030(1)(e)(v)(A) | 6 |
| RCW 13.04.030(1)(e)(v)(E)(II) | 6, 8 |
| RCW 13.04.450 | 8 |
| RCW 13.40.0357 | 10 |
| RCW 13.40.110 | 5, 8 |
| RCW 13.40.180 | 10 |
| RCW 13.40.300(3) | 6 |
| Wash. Const. Art. IV, § 6 | 7 |

I. ASSIGNMENTS OF ERROR

A. Assignments of Error

1. The Superior Court erred when it denied Appellant's motion to dismiss because neither the adult court nor the juvenile court had proper jurisdiction over Appellant's case.
2. The Superior Court erred when it entered a juvenile Disposition Order and a Protection Order in adult court.
3. The Superior Court did not have jurisdiction to enter a juvenile Disposition Order or a Protection Order in adult court.

B. Issues Pertaining to the Assignments of Error

1. Where the Juvenile Court had exclusive jurisdiction over the disposition of Appellant's case, but the Juvenile Court's jurisdiction lapsed because Appellant turned 21 years of age before disposition, did the Superior Court err when it entered a juvenile Disposition Order and a Protection Order in adult court? (Assignments of Error 1, 2 & 3)

II. STATEMENT OF THE CASE

The State charged Daniel Alfred Posey, Jr. by Amended Information in the Yakima County Superior Court with three counts of second degree rape—domestic violence, and one count of first

degree assault while armed with a firearm. RCW 9A.44.050(1)(a), 10.99.020, 9A.36.011(1)(a), 9.94A.510(3). (CP 79-82) The case originated in Juvenile Court and was assigned a Juvenile Court cause number because Daniel was 16 years old both at the time of the alleged crimes and the filing of the Information. (CP 87-90, 79-82, 105, 106) However, because first degree assault is classified as a "serious violent offense", the adult Superior Court had automatic original jurisdiction over the case, and it was transferred to adult Superior Court and assigned an adult court cause number.¹ (CP 87-90, 102, 103-04)

A jury found Daniel guilty of two counts of second degree rape, but found him not guilty of first degree assault and not guilty of the remaining second degree rape count. (CP 44, 70-78) Daniel had no prior juvenile adjudications or adult convictions. (CP 45) Under adult sentencing guidelines, his standard range was life with a minimum of 102-136 months. (CP 45) The trial court sentenced Daniel to a life sentence with a minimum term of 119 months of

¹Under the Juvenile Rehabilitation Act, RCW 13.04 et. seq., the Juvenile Courts have original jurisdiction when a person 17 years or younger is charged with a crime, except under certain limited circumstances. See RCW 13.04.030, 13.40.110. One of those exceptions is when a juvenile is 16 or 17 years old, and is charged with a crime defined as a "serious violent offense" under RCW 9.94A.030. First degree assault is so defined. Accordingly, the adult court had original jurisdiction in this case. RCW 13.40.110.

confinement. (CP 46)

Daniel appealed to this Court, arguing that the adult Superior Court did not have jurisdiction to sentence him as an adult after he was acquitted of the automatic-decline offense, that his due process and equal protection rights were violated when the adult trial court entered judgment and sentence against him, and that the trial court erred when it excluded evidence regarding the victims sexual preferences. (CP 21, 53; see also Appeal No. 23041-4-III) While Daniel's appeal was still pending, the Legislature amended the automatic-decline statute to require that juveniles acquitted of automatic-decline offenses be remanded to Juvenile Court for disposition. (See RCW 13.04.030(1)(e)(v)(E)(II)) In a supplemental brief, Posey argued that this statute applied retroactively to his case. (CP 21; see also Appeal No. 23041-4-III)

This Court disagreed with all of Posey's arguments, and affirmed his adult court judgment and sentence. (CP 22; see also Appeal No. 23041-4-III) Posey sought review at the Washington State Supreme Court. (CP 17-43) The Supreme Court unanimously agreed that Daniel was improperly sentenced as an adult, holding that the Legislature intended to impose more severe punishment only on juveniles who are actually convicted of, not just

charged with, certain criminal offenses; and that the adult court did not have jurisdiction to sentence Daniel. (CP 23-29, 32-33, 35, 38)

The Court remanded Daniel's case to the Juvenile Court "for further proceedings." (CP 33)

The Supreme Court filed its opinion on September 20, 2007. (CP 19) Daniel turned 21 years old on September 28, 2007. (CP 9, 87; RP 4) The Supreme Court filed its Mandate on October 16, 2007. (CP 17) The Juvenile Court held a hearing on remand on January 9, 2008. (RP 2-49) The presiding Juvenile Court judge, Susan Hahn, is also an adult Superior Court judge, and presided over Daniel's trial in adult court. (RP 2-3, 4)

Daniel moved to dismiss the case, arguing that the adult court lost jurisdiction upon his acquittal of the automatic-decline offense, and that the Juvenile Court lost jurisdiction upon Daniel's 21st birthday. (CP 13-15, 16; RP 6-16, 47) The judge agreed that the Juvenile Court no longer had jurisdiction over Daniel's case. (CP 92; RP 28-29, 48)

The judge then "transformed the room and the judge" into the adult Superior Court, and entered a Disposition Order imposing a standard range disposition of 60-80 weeks, with credit for time served. (RP 30-31; CP 9-10) The judge crossed out the words

"Juvenile Court" from the caption, and entered the Disposition Order under the adult court cause number. (RP 31; CP 9-12 (A complete Copy of the Order is attached in Appendix A.)) The court also entered a Protection Order and a Sex Offender Notice of Registration Requirements. (CP 7-8, 12; RP 44-45) This appeal timely follows. (CP 3)

III. ARGUMENT & AUTHORITIES

The juvenile courts in Washington State are vested with exclusive jurisdiction to handle matters involving juvenile defendants. RCW 13.04.030(1) (the complete text of the statute is attached in Appendix B). An adult court can obtain jurisdiction over a juvenile defendant in one of two ways. The first is after a decline hearing in which the Juvenile Court transfers jurisdiction over the juvenile to the adult court. Decline of jurisdiction may only be ordered "upon a finding that the declination would be in the best interest of the juvenile or the public." RCW 13.40.110.

The second, called automatic decline, occurs if the juvenile is charged with committing certain serious felonies. RCW 13.04.030 specifies the offenses that give rise to automatic decline:

Except as provided in this section, the juvenile courts in this state shall have exclusive original jurisdiction over all proceedings . . . [r]elating to juveniles alleged

or found to have committed offenses . . . unless . . .
[t]he juvenile is sixteen or seventeen years old and
the alleged offense is . . . [a] serious violent offense
as defined in RCW 9.94A.030[.] In such a case the
adult criminal court shall have exclusive original
jurisdiction.

RCW 13.04.030(1)(e)(v)(A). The crime of first degree assault is a
“serious violent offense” listed in RCW 9.94A.030. Consequently,
Juvenile Court jurisdiction was automatically declined, and the case
proceeded to trial in adult court. (CP 102, 103-04)

The jury found Daniel not guilty of the first degree assault
charge and firearm enhancement allegation, and guilty only of
second degree rape, which is not a “serious violent offense” under
RCW 9.94A.030. (CP 70-78) As a result, the adult court no longer
had jurisdiction over Daniel's case, and did not have authority to
enter judgment or impose a sentence. State v. Posey, 161 Wn.2d
638, 647, 167 P.3d 560 (2007). At this point, the Juvenile Court's
jurisdiction was revived. Posey, 161 Wn.2d at 646-67; RCW
13.04.030(1)(e)(v)(E)(II).

However, RCW 13.40.300(3) clearly states, “[i]n no event
may the juvenile court have authority to extend jurisdiction over any
juvenile offender beyond the juvenile offender's twenty-first
birthday[.]” Juvenile Court jurisdiction is strictly construed. State v.

Nicholson, 84 Wn. App. 75, 77, 925 P.2d 637 (1996) (citing State v. Rosenbaum, 56 Wn. App. 407, 410, 784 P.2d 166 (1989)). Even if a juvenile cause is pending but not yet heard on the merits, the Juvenile Court loses jurisdiction upon an offender's 21st birthday. See State v. Bushnell, 38 Wn. App. 809, 811, 690 P.2d 601 (1984) (citing State v. Brewster, 75 Wn.2d 137, 142-43, 449 P.2d 685 (1969); State v. Setala, 13 Wn. App. 604, 606, 536 P.2d 176 (1975)).

Therefore, when Daniel turned 21 on September 28, 2007, the Juvenile Court lost jurisdiction in this case. The judge correctly found that it had no authority as a Juvenile Court to enter a disposition order. However, the judge's decision to exercise adult court jurisdiction was flawed.

Wash. Const. Art. IV, § 6 provides that "[t]he superior court shall also have original jurisdiction in all cases and of all proceedings **in which jurisdiction shall not have been by law vested exclusively in some other court[.]**" (Emphasis added.) Thus, the Superior Court's jurisdiction is limited to cases "in which jurisdiction was not exclusively vested by law in some other forum or court." In re Dillenburg v. Maxwell, 70 Wn.2d 331, 351-52, 422 P.2d 783 (1967) (citing State ex rel. Malmo v. Case, 25 Wn.2d 118,

169 P.2d 623 (1946)).

RCW 13.04.030(1)(e) vests the Juvenile Court with exclusive original jurisdiction in cases “[r]elating to juveniles alleged or found to have committed offenses.” More importantly, the amended RCW 13.04.030(1)(e)(v)(E)(II) now states:

The juvenile court shall have exclusive jurisdiction over the disposition of any remaining charges in any case in which the juvenile is found not guilty in the adult criminal court of the charge or charges for which he or she was transferred, or is convicted in the adult criminal court of a lesser included offense that is not also an offense listed in (e)(v) of this subsection.

Because disposition of Daniel’s case is vested by statute exclusively with the Juvenile Court, the adult Superior Court did not have jurisdiction or authority to act in this case.²

Moreover, RCW 13.04.450 states that the provisions of RCW chapter 13.04 (Basic Juvenile Court Act) and RCW chapter 13.40 (Juvenile Justice Act) “shall be the exclusive authority for the adjudication and disposition of juvenile offenders, except where otherwise expressly provided.” It is nowhere provided that the adult Superior Court shall impose disposition on juvenile offenders or that

² RCW 13.40.110 also provides that, upon return to the Juvenile Court, the court may hold a decline hearing to determine whether to retain the case in Juvenile Court for the purpose of disposition or return the case to adult criminal court for sentencing. The State has previously conceded that there are no grounds to decline juvenile jurisdiction in this case. (CP 33)

adult Superior Court shall exercise authority over juvenile cases. There is simply no authority, constitutional or statutory, permitting the adult Superior Court to enter a disposition in a case where the Juvenile Court had, but subsequently lost, exclusive jurisdiction after a juvenile offender reached the age of 21 years.

At the rehearing, the State argued that the court could simply enter a juvenile disposition order nunc pro tunc. (RP 22) The judge correctly rejected this suggestion. (RP 23, 28-29) The purpose of a nunc pro tunc order is to record some prior act of the court which was actually performed but not entered into the record at that time. State v. Rosenbaum, 56 Wn. App. 407, 410-11, 784 P.2d 166 (1989) (citing State v. Mehlhorn, 195 Wn. 690, 692, 82 P.2d 158 (1938)). The authority of the court is limited to recording judicial action actually taken. Rosenbaum, 56 Wn. App. at 411 (citing State v. Ryan, 146 Wn. 114, 116-17, 261 P. 775 (1927)). Because no juvenile disposition was ordered originally, the judge correctly found that a nunc pro tunc order was not appropriate in this case.

But the judge was incorrect when she stated that dismissal of the case would "quite simply be a miscarriage of justice[.]" (RP 29) The judge was clearly not considering the full history of this

case. The State chose to charge crimes it was unable to prove, but that automatically sent Daniel into adult court. (CP 79-82) After being acquitted of the automatic-decline crimes, Daniel should have faced a maximum of 80 weeks (approximately one and one-half years) in a juvenile rehabilitation facility.³

Instead, Daniel was incarcerated for over four and one-half years in adult facilities, first the Yakima County Jail and eventually Walla Walla State Penitentiary.⁴ It took the appellate process over three years to finally issue the correct ruling—that Daniel should have received, and the Legislature always intended him to receive, a juvenile disposition.⁵

Daniel was confined for roughly three years longer than he legally should have been, by no fault of his own. To dismiss the case, and thereby remove any juvenile adjudications or convictions from his record and relieve him of further financial or reporting

³ A 16-year old offender with no criminal history is subject to a 30-40 week sentence under the juvenile sentencing statute, RCW 13.40.0357. A juvenile convicted of more than one offense must serve consecutive sentences. RCW 13.40.180. Accordingly, in juvenile court, Daniel would have been subject to a 60-80 week sentence.

⁴ Daniel was arraigned on April 17, 2003 and held in the Yakima County Jail during trial. (CP 102, 110-12) He was imprisoned at Walla Walla State Penitentiary before he was returned to Yakima County for rehearing, and he was finally released from custody on December 26, 2007. (CP 108-09)

⁵ Daniel filed his first Notice of Appeal on May 24, 2004, and the Supreme Court filed its opinion on September 20, 2007. (CP 53, 19)

obligations, is certainly not a miscarriage of justice. It instead can begin to rectify the injustice of having been improperly imprisoned for an additional three years in an adult correctional facility—three years of a young life that Daniel can never regain.

IV. CONCLUSION

The Juvenile Court lost jurisdiction over Daniel's case when he turned 21 years of age. But because exclusive jurisdiction was previously vested in the Juvenile Court, the Superior Court had no authority to assume jurisdiction in order to enter a disposition order and a protection order, and to impose reporting requirements upon Daniel. The case should have been dismissed. This Court should reverse the orders entered by the adult Superior Court, and remand for dismissal of the verdicts and terms imposed upon Daniel in this case.

DATED: June 19, 2008

/S/STEPHANIE C. CUNNINGHAM

STEPHANIE C. CUNNINGHAM

WSBA No. 26436

Attorney for Daniel A. Posey, Jr.

CERTIFICATE OF MAILING

I certify that on 06/19/2008, I caused to be placed in the mails of the United States, first class postage pre-paid, a copy of this document addressed to: (1) Kenneth Ramm, DPA, Prosecuting Attorney's Office, 128 N. Second St., Rm. 211, Yakima, WA 98901; and (2) Daniel A. Posey Jr., 12387 SE Lynwood Ave., Apt. H-11, Milwaukie, OR 97222.

/S/STEPHANIE C. CUNNINGHAM

STEPHANIE C. CUNNINGHAM, WSBA No. 26436.

APPENDIX A

DISPOSITION ORDER AND APPENDIX G (SEX OFFENDER NOTICE OF REG. REQ.) (CP 9-12)

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EX OFFICIO
SUPERIOR COURT

SUPERIOR COURT OF WASHINGTON
FOR THE COUNTY OF YAKIMA

State of Washington

DANIEL ALFRED POSEY JR.,

DOB: 9/28/86 SEX: Male

Plaintiff

vs.

Respondent.

No. ~~03-1-00820-1~~

03-1-00820-1
DISPOSITION ORDER

I. HEARING

1.1 A disposition hearing on the following was held on Wednesday, January 09, 2008.

1.2 Count(s) 2 and 3 are hereby dismissed.

1.3 ~~The court considered the facts supporting the criminal conduct by the respondent, the information and arguments offered by the parties and any pre-disposition reports. The court consulted and allowed to speak those persons and parties present who were entitled to comment and speak under RCW 13.40.130. The respondent was given the right of allocution. There being no reason why disposition should not be pronounced, the court finds:~~

Based upon the mandate of the Supreme Court's affirming the jury conviction and hearing argument of counsel (below) make the following findings:

II. FINDINGS

From the information considered by the court at the hearing and the record to date, the Court finds:

2.1 **CURRENT OFFENSES:** The respondent has been found guilty of the following offenses as shown below:

| Amended: | Count: | Offense: | RCW: | Offense Date | Plead Guilty | Found Guilty | Date: |
|--------------------------|--------|----------|-----------------|--------------|--------------------------|-------------------------------------|---------|
| <input type="checkbox"/> | 1 | Rape 2 | 9A.44.050(1)(a) | January 2003 | <input type="checkbox"/> | <input checked="" type="checkbox"/> | 1/29/04 |
| <input type="checkbox"/> | 4 | Rape 2 | 9A.44.050(1)(a) | April 2003 | <input type="checkbox"/> | <input checked="" type="checkbox"/> | 1/29/04 |
| <input type="checkbox"/> | | | | | <input type="checkbox"/> | <input type="checkbox"/> | |
| <input type="checkbox"/> | | | | | <input type="checkbox"/> | <input type="checkbox"/> | |

☐ Additional current offenses are set forth in Appendix A.

2.2 **SPECIAL FINDINGS RELATED TO OFFENSE:**

- ☐ Counts encompass the same course of conduct.
- ☐ Counts involve the use of a firearm in the commission of the offense.
- ☐ Counts involve the use of motor vehicle in the commission of the offense.
- ☐ Counts involve sexual motivation at the time of the commission of the offense.
- ☐ Mitigating factors are found as set forth in Appendix B.
- ☐ Aggravating factors are found as set forth in Appendix B.

2.3 **STANDARD RANGE OF PUNISHMENT:**

| Count | Offender Score | Offense Score: | Standard Range | Enhancement | Enhanced Range | Maximum Term |
|-------|----------------|----------------|----------------|-------------|----------------|--------------|
| 1 | 0 | A- | 30-40 weeks | | | A- |
| 4 | 0 | A- | 30-40 weeks | | | A- |
| | | | | | | |
| | | | | | | |

☐ Standard ranges for additional current offenses are set forth in Appendix A.

III. CONCLUSIONS OF LAW

No. ~~03-1-00820-1~~
03-1-00820-1

3.1 Respondent is guilty of the count(s) and offense(s) listed in paragraph 2.1

3.2 ☐ **MANIFEST INJUSTICE:** A sentence within the standard range would, in light of the purposes of RCW Chapter 13.40, constitute a manifest injustice for the reasons set forth in Appendix B, which are supported by clear and convincing evidence. The sentence below is a departure ☐ down ☐ up from the standard range.

IV. ORDER (COMMITMENT DISPOSITION)

IT IS ORDERED that the respondent serve the sentence and abide by the conditions set forth below.

4.1 **COMMITMENT:** The respondent is committed to the custody of the State of Washington Department of Social and Health Services, JUVENILE REHABILITATION ADMINISTRATION, for institutional placement for a period of:

| Count: | Confinement (Weeks) |
|---------------|------------------------|
| 1 | 30-40 |
| 4 | 30-40 |
| | |
| | |
| TOTAL: | 60-80 weeks |

- ☐ Totals exceed limits of RCW 13.40.180.
☐ Counts were committed through a single act or omission.

COMMITMENT ADJUSTED BY RCW 13.40.180

| | |
|--------------------|--------------|
| FINAL TOTAL | weeks |
|--------------------|--------------|

4.2 **CREDIT FOR TIME SERVED:** The respondent will receive credit under this cause for time served as follows:

80 weeks days served under this cause number.
 days credit served under cause #
 days served in /under

4.3 **COMMENCEMENT OF DISPOSITION:**

☒ The respondent is remanded to the Yakima County Juvenile Detention Facility pending transportation to the institutional placement.

☐ The respondent shall report to the Yakima County Juvenile Detention Facility on _____ at _____, to be confined there until transportation to the institutional placement.

V. ADDITIONAL ORDERS

5.1 **FINANCIAL:** The respondent shall pay the financial obligations as set forth in Appendix C under the terms and conditions stated therein.

5.2 **OTHER PROVISIONS:**

- ☒ JURISDICTION IS EXTENDED until age 21 or upon completion of the conditions of this order.
☒ DNA ID Analysis is ordered pursuant to RCW 43.43.754: DNA Identification System.
A biological sample shall be drawn for purposes of DNA identification.
☒ HIV TESTING is ordered.
☒ SEX OFFENDER REGISTRATION is ordered.
☐ This disposition will be reported to the DEPARTMENT OF LICENSING.
☐ Electronic Home Monitoring Fees are hereby ☐ WAIVED ☐ set at \$ _____.
☐ OTHER: .

5.3 **APPENDICES:** The following appendices are attached to and are a part of this Order of Disposition:

- ☐ A Additional Current Offenses Under This Cause.
☐ B Mitigating and Aggravating Factors / Manifest Injustice
☒ C Financial Order
☐ D Community Supervision Order
☐ E Chemical Dependency Disposition Alternative
☐ F Special Sexual Offender Disposition Alternative
☒ G Notification of Sex Offender Registration Requirements
☐ H Notification of Juvenile's Rights Regarding Maintenance, Access, Sealing And Destruction Of Records
☐ I Parental Notification of Reporting Offense Conviction to School Authorities

DATED: Wednesday, January 09, 2008

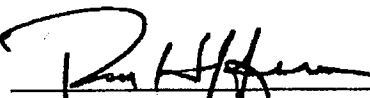

JUDGE/COURT COMMISSIONER

Presented by:

Approved as to form:



DEPUTY PROSECUTING ATTORNEY
WSBA # 32337


ATTORNEY FOR JUVENILE
WSBA # 4176

White/Original
Blue
Green
Canary
Pink
G. Rod

Clerk/Legal File
Detention/Probation
Juvenile Court Social File
Juvenile/Parents
Prosecuting Attorney
Defense Attorney

SEX OFFENDER NOTICE OF REGISTRATION REQUIREMENTS

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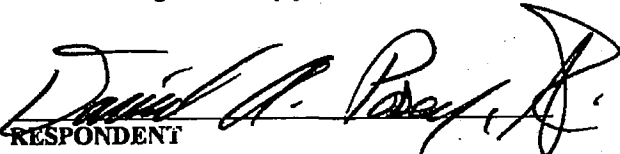
STATE vs. **DANIEL ALFRED POSEY JR.**

Cause No. ~~03-1-00820-1~~
03-1-00820-1

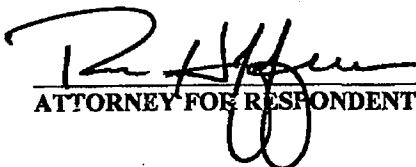
A person having been convicted of a sex offense (a) Violation of Chapter 9A.44 RCW, RCW 9A.64.020, RCW 9.68A.090, OR 9A.40.020, 9A.40.030 or that is, under Chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit such crimes or (b) a felony with a finding of sexual motivation under RCW 13.40. 135 is hereby notified of sex offender registration requirements and is required to register with the county sheriff in accordance with the following registration requirements.

REGISTRATION REQUIREMENTS

1. The respondent shall register within twenty four hours from the time of release from custody with the County Sheriff for the County of the person's residence. The following information shall be provided: (a) name; (b) address; (c) place of employment; (d) crime for which convicted; (e) date and place of conviction; (f) aliases used; (g) social security number; (h) date and place of birth; (i) photograph; and (j) fingerprints.
2. If the respondent is convicted of an offense that was committed on or after the 28th day of February, 1990, but is not sentenced to serve a time of confinement immediately upon sentencing, shall report to the County Sheriff to register immediately upon completion of being sentenced.
3. If the respondent changes residence within the same county, the respondent must send written notice of the change of address to the County Sheriff within seventy two (72) hours of establishing the new residence. If the respondent moves to a new county, the respondent must send written notice of the change of address at least 14 days before moving to the County Sheriff in the new county and then register with that County Sheriff within twenty-four hours of moving. The respondent must also send written notice within 10 days of the change of address in the new county to the county sheriff with whom the respondent last registered.
4. After probation ends, you are still required to register until the Court decides otherwise. Length of registration time varies with the offense(s) for which I am convicted.
5. It is a crime to knowingly fail to register in accordance with the above registration requirements.
6. I have read or had read to me the foregoing provisions. I understand these sex offender registration requirements and agree to comply with them.


RESPONDENT

DATE: Wednesday, January 09, 2008


ATTORNEY FOR RESPONDENT

DATE: Wednesday, January 09, 2008

Original Legal File
Blue Detention/Probation Counselor
Green Social File
Canary Juvenile
Pink Prosecuting Attorney
G. Rod. Attorney for Juvenile

YAKIMA COUNTY 08/04

APPENDIX B

RCW 13.04.030

Rev. Code Wash. (RCW) § 13.04.030 (2008)

§ 13.04.030. Juvenile court -- Exclusive original jurisdiction -- Exceptions

(1) Except as provided in this section, the juvenile courts in this state shall have exclusive original jurisdiction over all proceedings:

- (a) Under the interstate compact on placement of children as provided in chapter 26.34 RCW;
- (b) Relating to children alleged or found to be dependent as provided in chapter 26.44 RCW and in RCW 13.34.030 through *13.34.170;
- (c) Relating to the termination of a parent and child relationship as provided in RCW 13.34.180 through 13.34.210;
- (d) To approve or disapprove out-of-home placement as provided in RCW 13.32A.170;
- (e) Relating to juveniles alleged or found to have committed offenses, traffic or civil infractions, or violations as provided in RCW 13.40.020 through 13.40.230, unless:
 - (i) The juvenile court transfers jurisdiction of a particular juvenile to adult criminal court pursuant to RCW 13.40.110;
 - (ii) The statute of limitations applicable to adult prosecution for the offense, traffic or civil infraction, or violation has expired;
 - (iii) The alleged offense or infraction is a traffic, fish, boating, or game offense, or traffic or civil infraction committed by a juvenile sixteen years of age or older and would, if committed by an adult, be tried or heard in a court of limited jurisdiction, in which instance the appropriate court of limited jurisdiction shall have jurisdiction over the alleged offense or infraction, and no guardian ad litem is required in any such proceeding due to the juvenile's age: PROVIDED, That if such an alleged offense or infraction and an alleged offense or infraction subject to juvenile court jurisdiction arise out of the same event or incident, the juvenile court may have jurisdiction of both matters: PROVIDED FURTHER, That the jurisdiction under this subsection does not constitute "transfer" or a "decline" for purposes of RCW 13.40.110(1) or (e)(i) of this subsection: PROVIDED FURTHER, That courts of limited jurisdiction which confine juveniles for an alleged offense or infraction may place juveniles in juvenile detention facilities under an agreement with the officials responsible for the administration of the juvenile detention facility in RCW 13.04.035 and 13.20.060;
 - (iv) The alleged offense is a traffic or civil infraction, a violation of compulsory school attendance provisions under chapter 28A.225 RCW, or a misdemeanor, and a court of limited jurisdiction has assumed concurrent jurisdiction over those offenses as provided in **RCW 13.04.0301; or
 - (v) The juvenile is sixteen or seventeen years old on the date the alleged offense is committed and the alleged offense is:
 - (A) A serious violent offense as defined in RCW 9.94A.030;
 - (B) A violent offense as defined in RCW 9.94A.030 and the juvenile has a criminal history consisting of: (I) One or more prior serious violent offenses; (II) two or more prior violent offenses; or (III) three or more of any combination of the following offenses: Any class A felony, any class B felony, vehicular assault, or manslaughter in the second degree, all of which must have been committed after the juvenile's thirteenth birthday and prosecuted separately;
 - (C) Robbery in the first degree, rape of a child in the first degree, or drive-by shooting, committed on or after July 1, 1997;
 - (D) Burglary in the first degree committed on or after July 1, 1997, and the juvenile has a criminal history consisting of one or more prior felony or misdemeanor offenses; or
 - (E) Any violent offense as defined in RCW 9.94A.030 committed on or after July 1, 1997, and the juvenile is alleged to have been armed with a firearm.

(I) In such a case the adult criminal court shall have exclusive original jurisdiction, except as provided in (e)(v)(E)(II) of this subsection.

(II) The juvenile court shall have exclusive jurisdiction over the disposition of any remaining charges in any case in which the juvenile is found not guilty in the adult criminal court of the charge or charges for which he or she was transferred, or is convicted in the adult criminal court of a lesser included offense that is not also an offense listed in (e)(v) of this subsection. The juvenile court shall enter an order extending juvenile court jurisdiction if the juvenile has turned eighteen years of age during the adult criminal court proceedings pursuant to RCW 13.40.300. However, once the case is returned to juvenile court, the court may hold a decline hearing pursuant to RCW 13.40.110 to determine whether to retain the case in juvenile court for the purpose of disposition or return the case to adult criminal court for sentencing.

If the juvenile challenges the state's determination of the juvenile's criminal history under (e)(v) of this subsection, the state may establish the offender's criminal history by a preponderance of the evidence. If the criminal history consists of adjudications entered upon a plea of guilty, the state shall not bear a burden of establishing the knowing and voluntariness of the plea;

(f) Under the interstate compact on juveniles as provided in chapter 13.24 RCW;

(g) Relating to termination of a diversion agreement under RCW 13.40.080, including a proceeding in which the diveree has attained eighteen years of age;

(h) Relating to court validation of a voluntary consent to an out-of-home placement under chapter 13.34 RCW, by the parent or Indian custodian of an Indian child, except if the parent or Indian custodian and child are residents of or domiciled within the boundaries of a federally recognized Indian reservation over which the tribe exercises exclusive jurisdiction;

(i) Relating to petitions to compel disclosure of information filed by the department of social and health services pursuant to RCW 74.13.042; and

(j) Relating to judicial determinations and permanency planning hearings involving developmentally disabled children who have been placed in out-of-home care pursuant to a voluntary placement agreement between the child's parent, guardian, or legal custodian and the department of social and health services.

(2) The family court shall have concurrent original jurisdiction with the juvenile court over all proceedings under this section if the superior court judges of a county authorize concurrent jurisdiction as provided in RCW 26.12.010.

(3) The juvenile court shall have concurrent original jurisdiction with the family court over child custody proceedings under chapter 26.10 RCW as provided for in RCW 13.34.155.

(4) A juvenile subject to adult superior court jurisdiction under subsection (1)(e)(i) through (v) of this section, who is detained pending trial, may be detained in a detention facility as defined in RCW 13.40.020 pending sentencing or a dismissal.